

SMITH ENERGY CORP.,	:	Order Affirming Decision
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 98-123-A
ACTING MUSKOGEE AREA	:	
DIRECTOR, BUREAU OF	:	
INDIAN AFFAIRS,	:	
Appellee	:	September 29, 1999

Appellant Smith Energy Corporation seeks review of a July 17, 1998, letter from the Acting Muskogee Area Director, Bureau of Indian Affairs (Area Director; BIA), notifying Appellant that Oil and Gas Lease No. 601-45594 (61783), Georgie Cooper, Choctaw 61, had expired by its own terms for failure to produce oil and/or gas in paying quantities. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

There is no dispute that this lease is in its extended term and therefore is held as long as oil and/or gas is produced in paying quantities. Appellant also does not dispute that there has been no production since May 1997. Instead, Appellant contends that the lack of production was caused by circumstances beyond its control, *i.e.*, drilling mud in the well. Appellant asserts that it was in the process of attempting to correct the problem when it received the Area Director's letter concerning the expiration of the lease. Appellant suggests that the presence of drilling mud in the well might have been an act of sabotage, and cites Oklahoma State law for the proposition that an oil and gas lease remains in effect during a period of cessation unless the duration of the cessation was unreasonable.

The administrative record shows that there are 3 wells on this lease. The Area Director argues that Appellant has cited problems with the Cooper #1 well, but has provided no justification for the failure to produce from the Cooper #3 and #4 wells. Reports which Appellant provided to the Minerals Management Service (MMS) show that the Cooper #3 and #4 wells continued production for a short time after Appellant reported to MMS in February 1997 that the Cooper #1 well was off-line.

The Board has held that "the rules developed for non-Indian oil and gas leasing may not be applied mechanically to Indian oil and gas leases. Rather, such rules may be applied only where they are not inconsistent with the statutes governing oil and gas leasing of Indian lands

and the fiduciary duty of the Department to act in the best interest of the Indian landowners.” Citation Oilfield Supply and Leasing, Ltd. v. Acting Billings Area Director, 23 IBIA 163, 170 (1993). In regard to mechanical breakdowns, the Board has held that an Indian lease remains in effect for a reasonable time during which repairs are being made. See, e.g., Oxley Petroleum v. Acting Muskogee Area Director, 29 IBIA 169, 170 (1996); Citation, 23 IBIA at 170. Especially considering the fact that there had been no production for more than a year prior to the Area Director’s issuance of his notice of expiration, Appellant had some responsibility to show that the length of time the Cooper #1 well had been nonproductive was reasonable. It has not attempted to make any such showing.

Furthermore, Appellant has provided no explanation whatsoever as to why there was no production from the Cooper #3 and #4 wells. In his answer brief, the Area Director explicitly raised the lack of production from these wells as further justification for his conclusion that the lease had expired. Appellant was advised both of its responsibility to prove the error in the Area Director’s decision and of its right to file a reply brief. It did not file a reply brief or otherwise challenge the Area Director’s statements as to the Cooper #3 and #4 wells. Under these circumstances, the Board finds that Appellant has failed to carry its burden of proof.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Area Director’s July 17, 1998, decision is affirmed. 1/

Kathryn A. Lynn
Chief Administrative Judge

Anita Vogt
Administrative Judge

1/ The owners of the land at issue here were not served with any of the filings in this case. If they disagree with this decision, they may file a petition for reconsideration under 43 C.F.R. § 4.315.

Subsection 4.315(a) requires a petition for reconsideration to be filed with the Board within 30 days of the date of the Board’s decision.